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TAGS: MARR, MASS, KSEP, PREL, EAIR
SUBJECT: USG POLICY REGARDING STATUS OF DOD COMMERCIAL
CONTRACT AIRCRAFT

REF: (A) State 106799, U.S. Government Policy on Aviation-
Related Fees, August 1, 2007

1. Summary: This message transmits updated guidance on USG policy regarding the status of aircraft under contract to DoD. In addition, it provides guidance regarding the handling of requests by foreign governments that such aircraft transiting their territorial airspace obtain diplomatic clearances through the U.S. Embassy in advance.

2. The USG has consistently taken the position that Department of Defense (DoD) commercial contract aircraft and other USG contract aircraft are not state aircraft unless the particular aircraft is specifically designated as such by the USG. (The current USG policy on DoD commercial contract aircraft is at Ref A.) The normal practice of the USG is not to designate contract aircraft as state aircraft. As a consequence, such aircraft remain subject to the regime applicable to international civil aviation. Although some status of forces, access, and other agreements accord the same or similar rights of access, exit, and freedom from landing fees and similar charges to DoD commercial contract aircraft as are accorded U.S. state aircraft, such agreements do not designate contract aircraft as state aircraft.

3. Aircraft under contract to the USG are nonscheduled civil aircraft and therefore enjoy the transit rights provided to all nonscheduled civil aircraft under the Convention on International Civil Aviation (Chicago Convention), including the right to overfly and to make technical (e.g., non-traffic stops for maintenance and/or refueling) stops in foreign countries. Although such transit rights are subject to domestic regulation (e.g., for air traffic control purposes, or when carrying implements or munitions of war or dangerous cargo), civil aircraft are nevertheless accorded significantly more liberal operating rights regarding the transit of foreign countries than state aircraft. Consequently, it is in the USG's interest to preserve and reinforce the civil

characterization of aircraft under contract to the DoD, and to resist efforts to erode this status.

4. Unless the USG has declared a particular aircraft under contract to the DoD to be a state aircraft, it is USG policy to actively counter efforts by foreign governments to characterize such aircraft as state aircraft, or to require that diplomatic or other clearances/authorizations applicable only to state aircraft be obtained for such aircraft. To this end, with regard to aircraft under contract to the DoD, the following guidance applies:

(A) Flights through international airspace. Governments have no valid basis for requiring any aircraft, state or civil, to obtain diplomatic clearance to transit international airspace in Flight Information Regions (FIRs). State aircraft are not obliged to obtain clearance to fly through international airspace. The foreign government operating a FIR has no right to deny entry or the provision of air traffic control services to civil aircraft, including those under contract to the USG, that are otherwise in compliance with the rules applicable to all civil aircraft transiting the FIR. Furthermore, the foreign government responsible for the FIR should not demand diplomatic clearance or other special authorizations not required of other civil aircraft transiting the FIR. U.S. Embassies and other diplomatic posts should not process, issue, or endorse diplomatic or other clearances/authorizations for contract aircraft to transit international airspace in Flight Information Regions (FIRs) managed by a foreign government.

(B) Flights overflying or making technical stops in a foreign country. Subject to country-specific guidance, U.S. Embassies and other diplomatic posts will not process, issue, or endorse diplomatic or other clearances/authorizations for contract aircraft to overfly or make technical stops in the territory of a foreign country, unless the country's domestic law governing the transit of implements or munitions of war, or other dangerous cargo, requires such clearances/authorizations of all nonscheduled civil aircraft carrying such goods. In these cases, when issuing or endorsing a clearance/authorization request, USG officials should avoid the use of the term diplomatic clearance and include the following statement: This [authorization, request, approval, endorsement, etc.] applies to [an] aircraft operated by [operator name]. This aircraft is an unscheduled civil aircraft of the country of registration, and fully subject to the legal and regulatory regime applicable to civil aircraft, or words to that effect.

(C) Flights ending in, or originating from, a foreign country. Procedures in 4. (B) above apply. However, it should be noted that a bilateral agreement with the foreign country may apply to the movement of personnel and materiel in and out of that

foreign country, and should be consulted to determine if more specific guidance applies.

(D) Investigation of mishaps in foreign territory. The primary responsibility for investigating a mishap involving an aircraft under contract to the USG in a foreign country rests with the foreign government, as it does with other civil aircraft. USG resources belonging to DoD, the National Transportation Safety Board (NTSB), and other USG entities may be involved. However, such involvement does not confer jurisdiction over the investigation. Investigatory responsibility for mishaps involving U.S.-registered commercial aircraft under contract to DoD that occur in international airspace or on the high seas rests with the NTSB.

5. Incidents involving aircraft under contract to the USG which cannot be resolved in a manner consistent with the above guidance will be reported to the Department of State (non-DoD contracts) or DoD (DoD contracts), as appropriate.

6. It should be noted that there are several foreign governments that currently require diplomatic clearances for DoD commercial contract aircraft and for which diplomatic clearances are routinely obtained. Separate, country-specific guidance will be provided to posts in those countries in the near future.

7. In discussions with host governments on the issue of the status of aircraft under contract to the USG, in which U.S. officials explain that there is no requirement for such aircraft to obtain diplomatic clearances, posts may wish to draw upon the following talking points:

(A) The USG has consistently taken the position that aircraft under contract to the USG are not state aircraft unless the particular aircraft is specifically designated as such by the USG.

(B) The normal practice of the USG is not to designate commercial contract aircraft as state aircraft.

(C) Aircraft under contract to the USG retain their status as civil aircraft. As such, they are fully subject to the same host nation requirements applied to other nonscheduled civil aircraft, including the payment of air navigation fees, landing fees, and other taxes, as well as regulations relating to the carriage of hazardous material and other dangerous cargo.

(D) Although some status of forces, access, and other agreements grant contract aircraft the same or similar rights of access, exit, and freedom from landing fees and similar charges enjoyed by U.S. state aircraft, such agreements do not

change the status of contract aircraft to that of state aircraft.

8. The Department is not requesting Posts demarche the government or request feedback from host nation. However, if Posts receive unsolicited feedback regarding this policy, request posts provide feedback received to the DoD Executive Agent for the Foreign Clearance Program, HQ USAF/A5XP, at fcg@pentagon.af.mil (unclassified) or fcg@af.pentagon.smil.mil, telephone (703) 614-0130 (DSN 224). Any difficulties encountered in implementing this policy should be immediately conveyed to HQ USAF/A5XP.

9. Please slug all responses for PM/ISO and include RUEHQA/HQ USAF Washington DC//A5XP as an info addressee.

10. Minimize considered.
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